

ORIGINAL

Before the  
Federal Communications Commission  
Washington, DC 20554

RECEIVED

DEC 22 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Direct Access to the ) IB Docket No. 98-192  
 ) File No. 60-SAT-ISP-97  
INTELSAT System )

---

COMMENTS OF AT&T CORP.

---

Mark C. Rosenblum  
Lawrence J. Lafaro  
Teresa Marrero

295 N. Maple Avenue  
Room 3250H3  
Basking Ridge, NJ 07920  
(908) 221-5816

Dated: December 22, 1998

No. of Copies rec'd 411  
List ABCDE

---

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.....	i
I. INTRODUCTION.....	1
II. THE COMMISSION HAS THE LEGAL AUTHORITY TO ORDER DIRECT ACCESS TO INTELSAT .....	2
A. The Satellite Act Authorizes the Commission To Ensure Nondiscriminatory Use of the INTELSAT System .....	2
B. Comsat's Statutory Claim to Exclusive Direct Access to INTELSAT Misconstrues the Language in the Satellite Act.....	4
III. PERMITTING DIRECT ACCESS TO INTELSAT BY U.S. CARRIERS WILL NOT VIOLATE THE CONSTITUTION.....	5
A. No Comsat Property Right Exists .....	6
B. Even Assuming that Comsat Has a Property Right in Exclusive Direct Access, Permitting Direct Access Is Not an Unconstitutional Taking .....	7
IV. DIRECT ACCESS BY U.S. CARRIERS FURTHERS PRO-COMPETITIVE GOALS .....	11
V. THE COMPETITIVE BENEFITS OF DIRECT ACCESS WILL BE BEST REALIZED IF ACCOMPANIED BY "FRESH LOOK REQUIREMENTS .....	13
VI. CONCLUSION .....	15

## SUMMARY

AT&T supports the Commission's proposal to permit direct access to the INTELSAT system in the United States and remove the requirement that authorized entities utilize only COMSAT to access the INTELSAT satellites.

The Commission has clear, express statutory authority to permit direct access. The Communications Satellite Act ("Act") authorizes the Commission to ensure that authorized carriers shall have nondiscriminatory use of and equitable access to the INTELSAT system. While the Act clearly appoints Comsat as the only U.S. entity authorized to "participate" in INTELSAT, it does not extend to Comsat the exclusive right to be the sole U.S. entity entitled to access directly to the satellite system. Rather, COMSAT's right is to function as the only U.S. participant in INTELSAT, e.g., to share in the governance of INTELSAT. AT&T agrees with the Commission's proposed finding that Level 3 direct access is consistent with Comsat's role as the U.S. participant in INTELSAT -- Comsat would continue to enjoy exclusive U.S. participation in the Board of Governors and Meetings of Signatories, for example, and would be the sole U.S. representative with voting privileges in INTELSAT.

Permitting direct access to INTELSAT will not violate the constitution. Neither the facts nor the law support the existence of a contractual relationship between Comsat and the government that would bestow any property right upon Comsat. Even assuming that Comsat has a property right in exclusive direct access, Commission authorization of direct access would not be an unconstitutional taking. Direct access is not a permanent, physical occupation of Comsat's property so as to preclude Comsat of a reasonable return on its investment, nor is direct access a physical invasion of Comsat's property.

Eliminating Comsat's monopoly over Level 3 direct access to INTELSAT will produce substantial public interest benefits for U.S. consumers in the form of greater efficiencies, substantial cost savings, increased control over service provisioning, and service flexibility. As INTELSAT has noted, direct access permits customers to tailor services more flexibly for virtually any bandwidth, time duration, performance standard redundancy and service applications required. However, consumers will not experience the benefits of direct access if they remain bound by contractual obligations secured by Comsat in a monopoly environment. Therefore, once direct access is implemented, the Commission should offer carriers a "fresh look" to choose another provider, renegotiate contract terms, or maintain their existing contracts with Comsat, without the threat of penalty.

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	IB Docket No. 98-192
Direct Access to the	)	File No. 60-SAT-ISP-97
INTELSAT System	)	

**COMMENTS OF AT&T CORP.**

AT&T Corp ("AT&T") hereby submits its Comment in response to the Notice of Proposed Rulemaking<sup>1</sup> concerning the Commission's proposal to permit direct access to the INTELSAT system in the United States.

**I. INTRODUCTION.**

AT&T strongly supports the Commission's proposal to permit authorized U.S. carriers and users the option of obtaining direct access to the INTELSAT system.<sup>2</sup> The Commission has the legal authority to authorize direct access by U.S. telecommunications carriers to INTELSAT services, and nothing in the Act<sup>3</sup> prevents the Commission from granting appropriately authorized U.S. entities the option of becoming direct access users of INTELSAT. INTELSAT has made

---

<sup>1</sup> *Notice of Proposed Rulemaking*, IB Docket No. 98-192, File No. 60-SAT-ISP-97 (rel. Oct. 28, 1998), FCC 98-280 ("Notice").

<sup>2</sup> Level 3 direct access permits customers to enter into a contractual agreement with INTELSAT for ordering, receiving, and paying for INTELSAT space segment capacity at the same rate that INTELSAT charges its Signatories. Level 4 direct access permits customers, in INTELSAT member countries only, to make capital investments in INTELSAT in proportion to utilization of the INTELSAT system. *See Notice* at ¶8-9.

<sup>3</sup> Pub. L. No. 87-624, 76 Stat. 419 (1962) (codified as amended at 47 U.S.C. §§ 701-744) (the "Satellite Act").

direct access available since 1992 when it developed four types or “levels” of direct access THAT non-Signatory carriers and users could use to obtain space segment capacity directly from INTELSAT rather than going through INTELSAT Signatories.<sup>4</sup> The Commission should now allow U.S. customers of INTELSAT to receive the same competitive benefits of direct access that are already enjoyed by others around the world.

## **II. THE COMMISSION HAS THE LEGAL AUTHORITY TO ORDER LEVEL 3 DIRECT ACCESS TO INTELSAT.**

The Commission possesses clear, express authority, under the Satellite Act, to permit direct access to the INTELSAT system. As described below, the statutory language supports a finding by this Commission that would permit direct access to INTELSAT by authorized users and carriers and any claim by Comsat that it would not be adequately compensated for the costs it incurs in providing services via INTELSAT is without merit.<sup>5</sup>

### **A. The Satellite Act Authorizes the Commission To Ensure Nondiscriminatory Use of the INTELSAT System.**

Nothing in the Act prevents the Commission from permitting carriers to enter into direct access arrangements with INTELSAT. In fact, as the Commission has correctly noted, Section 201(c)(2) affirmatively authorizes the Commission to:

insure that all present and future authorized carriers shall have nondiscriminatory use of, and equitable access to, the communications satellite system and the satellite terminal

---

<sup>4</sup> See Notice at ¶ 8 (describing the four direct access levels which INTELSAT has implemented). Seventy-six countries have since permitted direct access whereby customers may enter into direct contractual agreements with INTELSAT for ordering, receiving, and rendering payments for INTELSAT space segment capacity at the same rates that INTELSAT charges its Signatories.

<sup>5</sup> *Id.* at ¶ 12 (describing Comsat’s arguments).

stations under just and reasonable charges, classifications, practices, regulations, and other terms and conditions . . . .<sup>6</sup>

Because COMSAT and other common carriers are “authorized carriers” as defined in the Act,<sup>7</sup> this provision necessarily imposes a statutory obligation upon the Commission to ensure that Comsat does not enjoy more favorable access to INTELSAT than other common carriers. Indeed, the rights of the common carriers under Section 201(c)(2) would be rendered illusory if they were not allowed direct access.<sup>8</sup> Accordingly, it is clear from the statutory text that the Commission is empowered to ensure that Comsat and other common carriers have the same nondiscriminatory and equitable direct access to INTELSAT. The Commission's proposed rulemaking merely serves to effectuate further this statutory requirement.

---

<sup>6</sup> 47 U.S.C. § 701(c) (emphasis added).

<sup>7</sup> *Id.* at § 702(7).

<sup>8</sup> Additionally, the Act expressly delegates to this Commission the right to ensure that any economies made possible by a communications satellite system are appropriately reflected in rates for public communication services. The Act states:

The Federal Communications Commission in its administration of the provisions of the Communications Act of 1934 as amended, and as supplemented by this Act, shall . . . prescribe such accounting regulations and systems and engage in such ratemaking procedures as will insure that any economies made possible by a communications satellite system are appropriately reflected in rates for public communications services.

47 U.S.C. § 721(c)(5).

**B. Comsat's Statutory Claim to Exclusive Direct Access to INTELSAT  
Misconstrues the Language in the Satellite Act.**

Comsat argues that Congress must have granted only one entity – Comsat – the right to directly access the INTELSAT system because of the use of the singular “a” and “the” throughout.<sup>9</sup> Specifically, Comsat cites (1) Section 101 of the Satellite Act, which states:

In order to facilitate this development and to provide for the widest possible participation by private enterprises, United States participation in the global system shall be in the form of a private corporation, subject to appropriate governmental regulation.<sup>10</sup>

and (2) the definition of a corporation in Section 108:

(8) the term “corporation” means the corporation authorized by Title III of the Act.<sup>11</sup>

Comsat's reliance on singular articles such as “a” or “the” is misplaced. The references mean one thing only – Comsat is the only entity entitled to be a participant in INTELSAT, allowing it, for example, to enjoy sole voting rights and Board Membership rights. The references that Comsat invokes do not, and cannot mean that Comsat is the sole U.S. entity entitled to directly access INTELSAT. Indeed, such a reading is inconsistent with the plain language of the Act – that other carriers have “nondiscriminatory access to the *system*,”<sup>12</sup> i.e., INTELSAT. Moreover, none of the rights and obligations conferred on Comsat by the Act are expressed in

---

<sup>9</sup> See “An Analysis of the FCC's Authority to Mandate ‘direct Access’ to the INTELSAT System,” Comsat Corporation (December 24, 1997) at 2-4.

<sup>10</sup> 47 U.S.C. § 701(c) (emphasis added).

<sup>11</sup> 47 U.S.C. § 702(8) (emphasis added). See Comsat Corporation “An Analysis of the FCC's Authority to Mandate ‘Direct Access’ for the INTELSAT System,” dated December 24, 1997, p. 2-3.

<sup>12</sup> 47 U.S.C. § 701(c).



terms of exclusivity.<sup>13</sup> Thus, AT&T agrees with the Commission that direct access would be consistent with Comsat's exclusive role as the sole U.S. participant in INTELSAT.<sup>14</sup>

### **III. PERMITTING DIRECT ACCESS TO INTELSAT BY U.S. CARRIERS WILL NOT VIOLATE THE CONSTITUTION.**

The Commission correctly concluded that Comsat does not have a property right in exclusive direct access to INTELSAT and permitting U.S. carriers direct access will not violate the Fifth Amendment's prohibition on uncompensated takings.<sup>15</sup> The Notice refers to the Comsat Non-Dominant proceeding, where Comsat argued that direct access would violate the "regulatory contract" between Comsat and the federal government and constitute a prohibited taking. Comsat claimed that it would be denied its exclusive franchise to provide INTELSAT access, which in turn would deprive its shareholders of a return on their investment.<sup>16</sup> Both arguments

---

<sup>13</sup> See Section 305 of the Satellite which authorizes Comsat to:

- (1) plan, initiate, construct, own, manage, and operate itself or in conjunction with foreign governments or business entities a commercial communications satellite system;
- (2) furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic; and
- (3) own and operate satellite terminate stations when licensed by the Commission under section 201(c)(7).

47 U.S.C. § 735(a)(2).

<sup>14</sup> Language in a recent House bill supports this position. H.R. 1872 (passed by the House) ordered the FCC to implement direct access, and the accompanying House Report expressly concluded that the Commission currently has the authority to permit direct access without amendment of the Communications Satellite Act. H.R. Rep. No. 105-494 at 61.

<sup>15</sup> Notice at ¶ 32.

<sup>16</sup> *Id.* at ¶ 31, 33.

lack merit. Comsat does not have a vested property right in exclusive direct access, and even if it did, the Commission's authorization of direct access is not an unconstitutional taking.

**A. No Comsat Property Right Exists.**

Central to Comsat's argument that its "regulatory contract" with the federal government has been breached is its assertion that Congress granted to it an exclusive right to INTELSAT direct access. According to Comsat, permitting direct access would interfere with the exercise of, or extinguish, Comsat's alleged exclusive franchise. However, any right that may have been conferred by the government is limited to Comsat's status as the sole U.S. government participant in INTELSAT because, as the Commission observed in the Notice, Comsat cannot show that it has a vested property right in exclusive access to INTELSAT.<sup>17</sup> A party claiming a property right must be able demonstrate the abrogation of an express contract by statute<sup>18</sup> or the existence of a contractual relationship between the private party and the government.<sup>19</sup> Comsat cannot satisfy this burden because its alleged exclusive right to direct access does not exist, either by statute or by contract.

Unlike the plaintiffs in Binghamton Bridge and Winstar, Comsat enjoys no contractual right that could be impaired by enactment of law or adoption of regulation, if the Commission

---

<sup>17</sup> Notice, at ¶¶ 33-36.

<sup>18</sup> The Binghamton Bridge, 70 U.S. 51 (1865). In Binghamton Bridge, the New York legislature expressly established a charter (i.e., a contract) by statute, granting specific bridge companies the right to build a bridge over the designated waterways within a certain area. A similar claim that the government had taken away through legislation a right conferred by contract was raised in the Winstar case. U.S. v. Winstar Corp. et al., 518 U.S. 839 (1996).

<sup>19</sup> U.S. v. Winstar Corp. et al., 518 U.S. 839 (1996).

authorized direct access to INTELSAT. The Satellite Act does not grant Comsat exclusive direct access to the INTELSAT system, nor can Comsat produce any written instrument between it and the federal government by which such a right has been conferred.<sup>20</sup> In contrast, the Binghamton Bridge and Winstar plaintiffs could demonstrate the vesting of a right through legislative act or by contract incorporating specific terms. Under the present terms, the Act merely provides that “United States participation in the global system shall be in the form of a private corporation,”<sup>21</sup> which is not the equivalent of affording exclusive direct access.

Thus, AT&T agrees with the Commission’s assessment that because there is no separate “governmental contract” with Comsat,<sup>22</sup> there is no basis for any finding that Comsat has a vested property right affording it exclusive access to the INTELSAT system.

**B. Even Assuming that Comsat Has a Property Right in Exclusive Direct Access, Permitting Level 3 Direct Access Is Not an Unconstitutional Taking.**

A violation of the Fifth Amendment by an uncompensated taking may only be supported under two situations – none of which exist here. The first occurs when the property is physically occupied, destroying the owner’s right to “possess, use and dispose of it.”<sup>23</sup> The Commission correctly concluded that direct access to INTELSAT is not a “permanent physical occupation” of property. Direct access will not result in permanent physical occupation of either Comsat’s or

---

<sup>20</sup> See Notice at ¶ 35.

<sup>21</sup> 47 U.S.C. § 701(c); see also “An Analysis of the FCC’s Authority to Mandate ‘Direct Access’ to the INTELSAT System,” Comsat Corporation (December 24, 1997) at 2-4.

<sup>22</sup> Notice at ¶ 35.

<sup>23</sup> See, e.g., Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435 (1982) (quoting United States v. General Motors Corp., 323 U.S. 373, 378 (1945)).

INTELSAT's property so as to preclude Comsat's use.<sup>24</sup> Direct access also will not prohibit continued access by Comsat to the INTELSAT system. Instead, other U.S. carriers will be permitted to contract with INTELSAT directly on the same basis as Comsat, essentially eliminating Comsat's bottleneck control over INTELSAT access.

In the second instance, an unconstitutional taking occurs when the property has been physically invaded and the owner has been denied of all economically beneficial use of the property.<sup>25</sup> Factors analyzed by courts in determining whether there is a physical invasion are: (1) the character of the governmental action, (2) the economic impact of the regulation on the claimant, and (3) the extent to which the regulation has interfered with distinct investment-backed expectations.<sup>26</sup> Comsat has made none of these showings.

First, the character of the governmental action reflected in permitting U.S. carriers direct access to INTELSAT is not a physical invasion of any Comsat property.<sup>27</sup> Commission grant of

---

<sup>24</sup> See Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 438 (1982) (whether a permanent physical occupation has occurred presents relatively few problems of proof. The placement of a fixed structure on land or real property is an obvious fact that will rarely be subject to dispute).

<sup>25</sup> See Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1015-16 (1992).

<sup>26</sup> Penn Central Transportation Co. v. New York City, 438 U.S. 104, 124 (1978); Preemption of Local Zoning Regulation of Satellite Earth Stations, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 11 FCC Rcd at 19302 (¶ 43).

<sup>27</sup> See, e.g., Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), Order on Reconsideration, Order on Application for Review, and Second Further Notice of Proposed Rulemaking, 12 FCC Rcd 17876, 17910-11 (¶ 68) (1997) (finding that adjustment from 3-digit CICs to 4-digit CICs is not a taking of 3-digit CICs because it is "necessary to allow all carriers to compete on an equal basis" and the government is not appropriating 3-digit CICs for its own use); Expanded Interconnection with Local Telephone Company Facilities, 9 FCC Rcd 5154, 5165 (¶ 28) (1994) ("Expanded Interconnection Report and Order") (finding that expanded interconnection requirements do not constitute a physical invasion of LEC property and instead,

(footnote continued on following page)

direct access would “serve the important Commission objective of promoting competition without interfering with Comsat’s continued access to the satellite system or its role as the sole U.S. governance representative,”<sup>28</sup> and thus, would constitute an adjustment in policy “to promote the common good.” Consequently, no physical invasion of Comsat (or INTELSAT) property would result from permitting direct access. Such access would permit voluntary contractual arrangements between U.S. carriers and INTELSAT, or Comsat, if the carrier so chooses.

Second, direct access would not create the requisite economic impact on Comsat to support a finding that there is a “taking” under the law. To constitute a taking, proposed regulation must defeat the economic viability of an entity.<sup>29</sup> A mere reduction of profits is not enough when all other ownership rights remain.<sup>30</sup> Although direct access may reduce the quantity of INTELSAT service purchased from Comsat by U.S. carriers, it is indisputable that Comsat’s

---

(footnote continued from previous page)

“are designed to . . . increase competition, lower prices, lead to varied new services and help improve the productivity of our economy as a whole”).

<sup>28</sup> See Notice at ¶ 40.

<sup>29</sup> Comsat “will still have a reasonable opportunity to earn a fair financial return from its INTELSAT investment,” Notice at ¶ 43. Accordingly, no taking can be shown. See FPC v. Hope Natural Gas Co., 320 U.S. 591, 605 (1944) (“Rates which enable [a] company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risk assumed certainly cannot be condemned as invalid, even though they might produce only a meager return on the so called “fair value” rate base.”); Duquesne Light Co. v. Barasch, 488 U.S. 299, 310-14 (1989) (concluding that no unconstitutional taking occurs when the net effect of a regulated rate does not threaten the integrity of the corporation).

<sup>30</sup> “Even a diminution of profits or a requirement that some loss be suffered is not enough, when all other accoutrements of ownership remain, to be a ‘taking’.” South Terminal Corp. v. EPA, 504 F.2d 646, 679 (1st Cir. 1974) (footnote omitted); see also Penn Central, 438 U.S. at 131; Telephone Number Portability, Third Report and Order, 13 FCC Rcd 11701, 11779-80 (¶ 149) (1998) (citing Illinois Bell Tel. Co. v. FCC, 988 F.2d 1254, 1263 (D.C. Cir. 1993)).

economic viability would not be threatened. At most, direct access would cause the loss of Comsat's monopoly rents,<sup>31</sup> to which Comsat has no right.<sup>32</sup> There is no reason to believe that a competitive market for access to INTELSAT would not yield reasonable profits.<sup>33</sup> Indeed, the INTELSAT investment structure itself guarantees Comsat, as the sole U.S. investor, a more than reasonable return on its investment, such that the economic impact of direct access on Comsat could not rise to the requisite level necessary to constitute a taking.

Finally, direct access will not have a significant impact on Comsat's reasonable investment-backed expectations. Comsat was created by statute to provide services in a regulated industry and, thus, it is effectively on notice that the Commission's regulatory policies are subject to change. It should be plain from the Commission's historical exercise of its regulatory authority to order access to common carrier facilities,<sup>34</sup> as well as the Commission's earlier proceeding that

---

<sup>31</sup> Notice at ¶ 41.

<sup>32</sup> "Under the Communications Act carriers are entitled to compensation; they are not entitled to unfettered discretion as to the source of that compensation." Rules and Policies Regarding Calling Number Service – Caller ID, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking, 10 FCC Rcd 11700, 11716 (¶ 43) (1995).

<sup>33</sup> Cf. Southwestern Bell Tel. Co. v. AT&T Communications of the Southwest, No. A 97-CA-132 SS, 1998 U.S. Dist. LEXIS 15637, \*37-\*38 (August 31, 1998) (rejecting claim that local interconnection pricing standards would amount to an uncompensated takings, because the competitive market can yield "reasonable" profits).

<sup>34</sup> Notice at 42 & nn.114 and 115; see also Expanded Interconnection Report and Order, 9 FCC Rcd at 5165 (¶ 29) ("Given their position as common carriers controlling bottleneck facilities, the LECs must expect that they will be subject to non-streamlined regulations as dominant carriers. Indeed, . . . this Commission frequently has ordered common carriers to provide access to bottleneck facilities in order to preserve competition and facilitate the development of new services."). More recently, the Commission flatly rejected the argument that the Telecommunications Act of 1996 constituted an unconstitutional taking because it "seeks to deprive incumbent LECs of their 'reasonable, investment-backed expectation to hold competitive

(footnote continued on following page)

considered issues relating to direct access to INTELSAT,<sup>35</sup> that Comsat had no reasonable basis for expecting to enjoy permanent, exclusive direct access to INTELSAT.<sup>36</sup>

#### **IV. DIRECT ACCESS BY U.S. CARRIERS FURTHERS PRO-COMPETITIVE GOALS.**

Eliminating Comsat's monopoly over direct access to INTELSAT will produce substantial public interest benefits for U.S. consumers in the form of greater efficiencies, substantial cost savings, increased control over service provisioning, and service flexibility. By accessing INTELSAT directly, carriers gain the obvious cost-savings benefit that result from their ability to avoid the mark-up costs associated with Comsat charges.<sup>37</sup> As the Satellite Users Coalition pointed out to the Commission, under the current arrangement, Comsat may take advantage of its monopoly over access by charging very high margins over its costs of acquiring INTELSAT services. For example, Comsat's average margin over the price it pays INTELSAT is

---

(footnote continued from previous page)

advantages over new market entrants.” Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15535 (¶ 68) (1996) (“Local Competition Order”).

<sup>35</sup> See Regulatory Policies Concerning Direct Access to INTELSAT Space Segment for the U.S. International Service Carriers, Report and Order, 97 FCC 2d 296 (1984), aff'd, Western Union International, Inc. v. FCC, 814 F.2d 1280 (D.C. Cir. 1986).

<sup>36</sup> The Commission should also clarify that to the extent it is assessing Comsat's reasonable investment-backed expectations, this assessment must not include any of Comsat's non-INTELSAT investments. See Comsat Study – Implementation of Section 505 of the International Maritime Satellite Telecommunications Act, Final Report and Order, 77 FCC 2d 564 (1980).

<sup>37</sup> Over a ten-year period direct access will save U.S. consumers over \$1 billion dollars. See Satellite Users' Coalition “Analysis of Privatization of Intergovernmental Satellite Organizations Proposed in H.R. 1872” filed by AT&T on March 16, 1998 (“Privatization Analysis Paper”).

approximately 68 percent,<sup>38</sup> and some Comsat rates exceed the INTELSAT Utilization Charge (“IUC”) by as much as 250 percent.<sup>39</sup>

Direct access also will allow carriers to provide their customers with timely responses to questions and faster service implementation because such access removes an intermediate entity -- Comsat -- from its service provisioning. Therefore, from the initial planning stages through the final end-to-end testing and start of operation, carriers benefit from the efficiencies afforded by direct access. Additionally, eliminating an intermediary such as Comsat will enable direct access carriers to have greater control over service quality, performance costs, connectivity, and true redundancy. Finally, direct access carriers will benefit because they will no longer be tied to provisioning only Comsat tariffed service offerings; direct access carriers will be able to tailor services more flexibly when providing INTELSAT services under a direct access arrangement. As INTELSAT points out, “Direct Access Customers can tailor services more flexibly than going through a third party provider, for virtually any bandwidth, time duration, performance standard redundancy and service application required.”<sup>40</sup>

Thus, direct access will facilitate greater competition in the sale of U.S. satellite services because competitive carriers will be able to realize substantial cost savings and increased

---

<sup>38</sup> There are strong indications that this margin will be reduced to 35 percent as a result of direct access. Privatization Analysis Paper at 24.

<sup>39</sup> See Notice at ¶ 45, citing Satellite Users’ Coalition, “The Legal Authority of the Federal Communications Commission to Authorize Direct Access to the INTELSAT System” filed March 7, 1998.

<sup>40</sup> See Satellite Users’ Coalition, “The Legal Authority of the Federal Communications Commission to Authorize Direct Access to the INTELSAT System” filed March 7, 1998, n. 5, citing INTELSAT, “Accessing INTELSAT Directly,” September 1997.



efficiencies in service quality and service provisioning. Enhanced competition also will provide users with more alternatives in choosing communications providers and services -- public interest benefits that the Commission has long supported. Indeed, INTELSAT recognized such benefits in implementing direct access. To date, 93 countries have taken advantage of the competitive benefits associated with either Level 3 or Level 4 direct access to INTELSAT.<sup>41</sup> Customers in those countries have been enjoying the benefits afforded by directly accessing INTELSAT. Unless the Commission adopts its proposal to permit direct access to INTELSAT, U.S. carriers will remain at a competitive disadvantage when competing with foreign carriers that have direct access to INTELSAT.

**V. THE COMPETITIVE BENEFITS OF DIRECT ACCESS WILL BE BEST REALIZED IF ACCOMPANIED BY “FRESH LOOK” REQUIREMENTS.**

With the implementation of the direct access policy, carriers will have the option of securing access to the INTELSAT system on their own, through other providers, or through Comsat. As a result, the terms and conditions for direct access, especially prices, will likely become more favorable. However, carriers will not achieve the benefits of direct access if they remain bound by contractual obligations secured by Comsat when it was the only provider. Indeed, direct access without permitting other carriers the ability to select other options would diminish the benefits to be gained by such Commission action. Therefore, once direct access is implemented, the Commission should offer Comsat's customers a “fresh look” to choose another

---

<sup>41</sup> Notice, Appendix A.

provider, renegotiate contract terms, or maintain their existing contracts with Comsat, without the threat of penalty.

In the Comsat Non-Dominant proceeding, the Satellite Users Coalition (AT&T, MCI, and Worldcom, Inc.) requested adoption of “fresh look” simultaneously with the implementation of direct access.<sup>42</sup> The Commission responded by proposing to address “fresh look” in a separate proceeding.<sup>43</sup> This proceeding is an appropriate occasion to do so. Permitting Comsat’s customers to renegotiate their contracts, without having to pay a penalty, is consistent with the Commission’s prior decisions. For example, the Commission adopted a fresh look requirement when it ordered local exchange carriers that owned bottleneck facilities to offer expanded interconnection for special access.<sup>44</sup> Recognizing that previously established long-term access arrangements would “prevent customers from obtaining the benefits of the new, more competitive interstate access environment,”<sup>45</sup> fresh look was adopted to enable parties to avail themselves of

---

<sup>42</sup> See Satellite Users Coalition, “The Legal Authority of the Federal Communications Commission to Authorize Direct Access to the INTELSAT System,” dated March 6, 1998, at 1-2.

<sup>43</sup> Comsat Corporation; Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Rules for Alternative Incentive Based Regulation of Comsat Corporation, Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 14083, 14088 (¶ 6) (1998).

<sup>44</sup> Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7463-65 (¶¶ 201-202) (1992) (“Expanded Interconnection Order”), recon., 8 FCC Rcd 7341, 7342-59 (¶¶ 3-41) (1993) (“Expanded Interconnection Order on Reconsideration”), vacated on other grounds and remanded sub nom. Bell Atlantic Tel. Cos. v. FCC, 24 F.3d 1441 (1994) (subsequent citations omitted).

<sup>45</sup> Expanded Interconnection Order, 7 FCC Rcd at 7463 (¶ 201). See also Local Competition Order, 11 FCC Rcd 15499, 16044 (¶ 1094) (1996) (permitting CMRS providers to renegotiate interconnection contracts that were inconsistent with mutual compensation policy), rev’d in part on other grounds sub nom. Iowa Utils. Bd v. FCC, 120 F.3d 75 (8<sup>th</sup> Cir.), cert. granted, 66

(footnote continued on following page)


new opportunities in a developing competitive market. Failure to provide “fresh look” in this instance would “deprive customers of the benefits of competition”<sup>46</sup> that are intended by permitting direct access to the INTELSAT system.

**VI. CONCLUSION.**

For the reasons stated above, AT&T urges the Commission to permit direct access to INTELSAT.

Respectfully submitted,

AT&T CORP.

By   
Mark C. Rosenblum  
Lawrence J. Lafaro  
Teresa Marrero

Room 3250H3  
295 North Maple Avenue  
Basking Ridge, NJ 07920  
(908) 221-5816

Dated: December 22, 1998

---

(footnote continued from previous page)

U.S.L.W. 3490 (1998); Amendment of the Commission’s Rules Relative to Allocation of the 849-851/894-896 MHz Bands, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 4582, 4583-84 (¶¶ 4-8) (1991) (imposing “fresh look” requirements with respect to air-ground radiotelephone service).

<sup>46</sup> See Expanded Interconnection Order on Reconsideration, 8 FCC Rcd at 7347 (¶ 16).

**CERTIFICATE OF SERVICE**

I, Margaret Brue, do hereby certify that on this 22<sup>nd</sup> day of December, 1998, a copy of the foregoing "Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties on the attached service list.

Margaret Brue  
Margaret Brue

## SERVICE LIST

Ambassador Vonya B. McCann  
United States Coordinator  
Bureau of International  
Communications and  
Information Policy  
Department of State  
Room 4826  
2201 C Street, N.W.  
Washington, DC 20520-1428

Joan Donoghue  
Assistant Legal Adviser for  
Economic, Business and  
Communications Affairs  
Office of the Legal Adviser  
2201 C Street, N.W.  
Department of State  
Washington, DC 20520-6310

Robin R. Layton  
ITA  
Department of Commerce  
Room 4324  
14th St. & Constitution NW  
Washington, DC 20230

Richard Beaird  
Bureau of International  
Communications and  
Information Policy  
Department of State  
Room 4836  
2201 C Street, N.W.  
Washington, DC 20520-1428

Steven Lett  
Bureau of International  
Communications and  
Information Policy  
Department of State  
Room 4826  
2201 C Street, N.W.  
Washington, DC 20520-1428

Anthony Cina  
Bureau of International  
Communications and  
Information Policy  
Department of State  
Room 4826  
2201 C Street, N.W.  
Washington, DC 20520-1428

Gary Couey  
Bureau of International  
Communications and Information  
Policy  
Department of State  
Room 4826  
2201 C Street, N.W.  
Washington, D.C. 20520

Shirl Kinney  
Deputy Assistant Secretary  
for Communications and  
Information  
NTIA  
Department of Commerce  
Room 4898  
14th Street & Constitution, N.W.  
Washington, D.C. 20230

Suzanne Settle  
Senior Policy Advisor  
Department of Commerce NTIA  
Room 4701  
14th St. & Constitution, N.W.  
Washington, DC 20230

Jack Gleason,  
Acting Administrator  
Office of International  
Affairs  
Department of Commerce NTIA  
Room 4701  
14th St. & Constitution, N.W.  
Washington, DC 20230

Larry Irving  
Assistant Secretary for  
Communications and  
Information  
Department of Commerce NTIA  
Room 4898  
14th St. & Constitution, N.W.  
Washington, DC 20230

Barbara Wellberry  
Chief Counsel  
Department of Commerce NTIA  
Room 4713  
14 St. & Constitution Ave. NW  
Washington, DC 20230

Cathleen Wasilewski  
Attorney Advisor, Office of  
Chief Counsel  
Department of Commerce NTIA  
Room 4713  
14th St. & Constitution N.W.  
Washington, DC 20230

John Dalton  
Secretary of the Navy  
Office of the Secretary  
Department of the Navy  
The Pentagon  
Washington, DC 20310

Dr. James E. Soos  
Deputy Assistant Secretary  
of Defense for C3  
Room 3E194  
6000 Defense Pentagon  
Washington, DC 20301-6000

Carl Wayne Smith, Esq.  
Code AR Defense Information  
Systems Agency  
701 South Courthouse Road  
Arlington, VA 22204

Office of General Counsel  
National Security Agency  
9800 Savage Road  
Fort Meade, MD 20755-6000

Robert S. Koppel  
MCI WorldCom  
15245 Shady Grove Road  
Suite 460  
Rockville, MD 20850-3222

John Scorce  
MCI WorldCom  
1801 Pennsylvania Ave., N.W.  
Washington, DC 20006

Gail Polivy, Esq.  
GTE Hawaiian Telephone Company  
1850 M Street, N.W.  
Washington, DC 20036

Keith H. Fagan  
COMSAT Communications  
6560 Rockspring Drive  
Bethesda, MD 20817

Leon Kestenbaum  
Kent Nakamura  
Sprint Communications  
Company L.P.  
1850 M Street, N.W.  
Washington, DC 20036